

you are against that, and if you are against Dr. Berwick, whose side are you on?

Dr. Berwick founded the Institute for Healthcare Improvement, one of the first organizations to promote systematic and sustainable health care quality improvement. He has worked on quality initiatives as a board member of the American Hospital Association, as chair of the Advisory Council for the Agency for Healthcare Research and Quality, and as a member of President Clinton's Advisory Commission on Consumer Protection and Quality. That is his work.

That is probably why Tom Scully, CMS Administrator under President George W. Bush, said:

You are not going to do any better than Don Berwick.

So I ask my colleagues: Do we really need to raise the phony scarecrows of rationing, of death panels, of socialized medicine?

Do we really need to go there against \$1 trillion in waste and inefficiency every year? Do you really want reform efforts to fail against 100,000 American lives lost every year due to avoidable medical errors?

Do you really want reform efforts to fail against eliminating hospital-acquired infections and providing better coordinated care for patients who have multiple doctors and multiple conditions? Do you really want the reform effort to fail? Is this how far we have fallen?

There is a huge window where we could work together on a win-win path, where we could improve the quality of health care for Americans while reducing its cost by coordinating the care better, by coordinating electronic health records better, by avoiding hospital-acquired infections, by avoiding unnecessary care, by making sure doctors know what the best evidence is for treatment as they have to take on patients with multiple difficulties and symptoms. We could do this together. This is a win-win, and Dr. Berwick is an expert with bipartisan public/private—or Republican and Democratic support and recognition of his particular expertise in this area. I urge my colleagues to treat Dr. Berwick as the highly qualified individual he is, not as an opportunity for political grandstanding—we do enough of that around here—not as a way to wish failure on America in this vital task that lies before us. At long last, my friends and colleagues, are we not better than that?

Mr. President, I yield the floor.

The ACTING PRESIDENT pro tempore. The Senator from Wyoming.

#### A SECOND OPINION

Mr. BARRASSO. Mr. President, I come to the floor today, having just returned from spending a wonderful week over the Fourth of July in Wyoming, visiting with people across the Cowboy State at senior centers, Kiwanis clubs,

Rotary clubs, and repeatedly the issue came up of this appointment of Dr. Berwick to head Medicare and Medicaid.

My colleague who just left the floor talked about the playbook of delay and obstruction. I will tell you that this recess appointment and the overall appointment of Donald Berwick is absolutely a page out of the playbook of the U.S. President of delay and obstruction.

Last year I came to this floor and said we should have somebody in charge of Medicare and Medicaid. When this body is talking about cutting \$500 billion from our seniors on Medicare, not to save Medicare but to start a whole new government program, there ought to be somebody in charge of Medicare in this country who can answer the questions about what are the impacts going to be. But the President of the United States refused to name anyone.

At a time when this body was debating how to handle 16 million more Americans jammed and crammed into Medicaid, a program where half the doctors in the country will not see those patients, it is like giving somebody a bus ticket when a bus isn't coming. Those people may have coverage but they are not able to get care. There should have been somebody in charge of Medicaid. I came to this floor and said: Mr. President, it is time to make someone take over the responsibilities, to be in charge of Medicare and Medicaid so they can come and explain to this Senate and this country what the impacts are going to be of the cuts in Medicare and the cramming of more and more people into Medicaid. But the President of the United States refused.

The playbook of delay and obstruction belongs to this administration. The playbook of delay and obstruction is what led us here today, to a situation where no one was even named to be in charge of Medicare and Medicaid for the United States until after an extremely unpopular and unwise health care bill was signed by the President of the United States. Then and only then did the President of the United States decide who he would want to put in charge of Medicare and Medicaid. To me, this is an insult to the American people, an insult that the American people would never ever have an opportunity of having open congressional hearings to have explained to them the positions of this man nominated to head Medicare and Medicaid for this country.

I think the President of the United States has made a mockery of his pledge to be accountable as an administration, to be transparent as an administration. That is what I heard at senior centers in Rock Springs, WY, and in Riverton, WY, at a Kiwanis club, people there as well as at a meeting in Powell, WY, at the Rotary club. People all across Wyoming and all across the country are very concerned, saying how is this going to affect me

personally. Seniors know if you take \$500 billion away from their Medicare, not to help seniors, not to help Medicare, but to start a whole new government program—they are very interested how that is going to work because that affects each and every one of them personally.

I heard my colleague from Rhode Island talk about coordinated care. I am with him. We need to coordinate care. That is why I was surprised to see Members of the Democratic side of this Senate vote to kill the program of Medicare Advantage for 10 million Americans. These are individuals who signed up for Medicare Advantage because there is an advantage. It actually helps with preventive medicine and it helps with coordinated care. That is going away. Yet the President of the United States did not have anybody in charge of Medicare or Medicaid to explain what would be the impact of getting rid of Medicare Advantage on those 10 million people who need coordinated care and needed preventive medicine.

When I hear my colleague from Rhode Island say if you are against Dr. Berwick, then whose side are you on, I would say I am on the side of the people of Wyoming, the seniors of this country, the people who are seeing \$500 billion of Medicare cut from them to start a whole new government program. They realize it is not going to help them. That is why at town meetings and visits around the State of Wyoming people believe ultimately they are going to end up paying more for their care and are going to have less care available to them because of this very unpopular health care law. That is why, week after week, I come to the Senate floor to talk as a practicing physician, someone who has taken care of patients for 25 years around the State of Wyoming, to give a doctor's second opinion, to talk about what I see, as a physician, with this health care law that ultimately I believe is going to be bad for patients, bad for payers—the people across this country who are going to pay the bill for this—and bad for providers, the nurses and doctors who take care of the patients.

Here we now have appointed, without a hearing, without a debate, without this Senate having had a chance to vote, a Director of Medicare and Medicaid who has expressed many opinions that do fly in the face of and are way out of line with the opinions of the American people. So it is not a surprise you see headlines in places such as the New York Times that say "Tough Confirmation Battle Looming For Medicare Nominee." That is in the New York Times.

The Boston Globe, the hometown paper where the nominee has been known to practice, "Dangerous To Your Health," of Dr. Berwick.

What is this administration trying to hide? Why is this administration unwilling to have hearings? Why is the administration not allowing Dr. Berwick to come to Congress to explain to

the American people his opinions and his views? All we know is what we have read, what we have seen from his speeches, the things he has written. Likely, it is because if those things were heard by the American people this man may absolutely be unconfirmable.

If that is what the President wants, that is what the President got. Because right now I will tell you the President of the United States has his own health care rationing czar.

You say how can you imagine that sort of thing? Let's look at some of these quotes from Dr. Berwick.

The decision is not whether or not we will ration care—the decision is whether we will ration with our eyes open.

This is not some long-ago quote. This is last year:

The decision is not whether or not we will ration care—the decision is whether we will ration with our eyes open.

This is what he says about the British health care system. He says:

I fell in love with the [national health system] . . . to an American observer, the [National Health Service] is such a seductress.

Who talks like that? He said:

The [National Health Service] is not just a national treasure, it is a global treasure. As unabashed fans, we urge a dialogue on possible forms of stabilization to better provide NHS with the time, space, and constancy of purpose to realize its enormous promise.

I will tell you as a practicing physician that the rates of cancer survival in the United States are much higher than in Britain. It is not that our doctors are better, it is that people get care sooner—early detection, prevention, early treatment. Those are the keys to cancer survivability. So what we know is that it is not that the doctors in the United States are better than those in England, it is that the patients in the United States get care where they do not in England. But, then again, Dr. Berwick loves the British health care system. He actually says:

I am romantic about the National Health Service; I love it.

That is what we have. We have a recess appointee who also went on to have some ideas about wealth in the United States. He said:

Any health care funding plan that is just, equitable, civilized and humane must redistribute wealth from the richer among us to the poorer and less fortunate.

Here we have a recess appointee who will make decisions for hundreds and hundreds of billions of dollars, that impact the lives of the American people, without ever having a Senate debate, without ever having a Senate hearing, without us ever having one word of testimony because the President of the United States believes that he knows better than the people of this country.

Dr. Berwick coauthored a book. He talked about one of the primary functions of health regulation is to "constrain decentralized individual decisionmaking." Let me say that again: "Constrain decentralized individual decisionmaking." Individuals? Humans?

People around the communities. People in our home States. He says we want to constrain local people making local decisions. And he says to weigh public welfare against the choices of private consumers. For a consumer, what is more important to them than their health?

This is not a one-party-only situation. Even MAX BAUCUS, Senate Finance chairman, issued a statement critical of this end-around decision-making by the President.

It is interesting how things change. When Barack Obama was a Member of the U.S. Senate, as he was not that long ago, the President at the time, George W. Bush, made a recess appointment. This is what President, then Senator Obama, had to say of John Bolton. He said, "He's damaged goods." He said, "He'll have less credibility."

Don Berwick is damaged goods. He will have less credibility. I am not talking about that with a couple of Senators, I am talking about it from the standpoint of the American people. The American people know and understand that the President of the United States is trying to hide something. That is why there has not been an open hearing. The Republicans have been asking for an open hearing. The Republicans have been asking for a number of weeks for an open hearing. I have been asking that the President name somebody to this position since last year but, no, in the playbook of delay and obstruction, the administration has decided not to do that—don't name anybody until well after the bill is signed into law and then don't allow that person to come to the Senate for a confirmation hearing.

What are they trying to hide from the American people? That is where we are today. We are in a situation where the President of the United States has made an appointment, a recess appointment without hearings, without the American people knowing or being able to ask the questions. What exactly are you going to do here, Dr. Berwick, when you cut \$500 billion from our seniors on Medicare? What is that impact going to be on their lives when you cut money from hospice, when you cut money from nursing homes, when you cut from physical therapy, when you cut from rehab, when you cut money from hospitals, when you cut money from physicians? We have more and more people becoming Medicare age every year. Why is the President of the United States unwilling to have that individual come to the Senate and explain to the American people how it is going to work? The people have a right to know.

That is why I am not surprised and was not surprised this past week in Wyoming—in Riverton, in Rock Springs, in Powell, as I traveled around the State—to have people coming up to me saying: What is going to happen to my Medicare, now that the President has made this recess appointment over the Fourth of July, when the Members

of Congress are not in Washington but are at home, visiting with the folks in their districts?

What is this going to mean for my health care or, as many others say, what does this mean for my mom or my dad? Those are questions that are not going to be answered because the President of the United States has decided to make a recess appointment at a time the American people have the right to expect and deserve to know from a President who has campaigned and promised, promised the American people, transparency and openness and accountability, and now the American people realize they have received none of those things.

So, again, as a physician I come to the Senate floor. I spent all day Friday at a Wyoming Medical Center visiting with people in Casper. Senators around the country went home and talked to people, in fact, many back to where they worked. I went back to where I worked at the hospital, visited with doctors and nurses and patients as well. All are concerned, concerned about this health care law that they believe is going to raise the cost of their health care, lower the quality; concerned about a health care law that they believe is going to be bad for them as patients, bad for the taxpayer because the costs are going to go up; bad for the providers, the nurses and doctors who take care of them; bad for the American people.

That is why so many of them, still today, believe this health care bill should be repealed and replaced with things that put patients in charge, not insurance company bureaucracies, not Washington, DC bureaucrats; that would put patients in charge. That is what we need in this country. That is the kind of health care the American people need. That is what they are asking for. And when my colleague says: If you are against Dr. Berwick, then whose side are you on? I am on the side of the people I have taken care of all around the State of Wyoming for the last 25 years.

I yield the floor and I suggest the absence of a quorum.

The ACTING PRESIDENT pro tempore. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DURBIN. I ask unanimous consent that the order for the quorum call be rescinded.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

Mr. DURBIN. Mr. President, I ask unanimous consent to speak as in morning business.

The ACTING PRESIDENT pro tempore. Without objection, it is so ordered.

#### KAGAN NOMINATION

Mr. DURBIN. Mr. President, the Senate is returning to Washington after the Fourth of July holiday recess. The